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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In the Matter of**

**Freeze on CMRS Paging Applications for  
Exclusive Frequencies**

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**WT Docket No. 96-18**

**To: The Commission**

**EMERGENCY PETITION FOR RELIEF**

Electronic Engineering Company (EEC), by its attorney, hereby files an emergency petition seeking interim relief from the application filing/processing freeze currently in place for exclusive commercial mobile radio service (CMRS) frequencies. In support whereof, the following is respectfully submitted:

1) EEC is a paging company which provides paging services throughout the state of Iowa on non-nationwide exclusive CMRS paging frequencies. EEC qualifies as a small business under the Commission's rules.<sup>1</sup>

2) Paragraph 227 of the Commission's Second Report and Order and Further Notice of Proposed Rule Making (Second Report and Order), 12 FCC Rcd. 2732 (1997); 62 F.R. 11616 (March 12, 1997) indicates that paging applications filed on or after the February 19, 1997 adoption

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<sup>1</sup> See 47 C.F.R. §22.223(b).

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date are to be dismissed by the staff without consideration.<sup>2</sup> Because the application filing/processing freeze is having a significant impact upon EEC's paging operations,<sup>3</sup> undersigned counsel's office recently contacted the CMRS application processing staff to determine whether applications for interim authority would be entertained. The staff relied upon the Second Report and Order and informed undersigned counsel's office that while applications seeking interim authority would not be dismissed immediately, such applications would not be processed during the pendency of the Commission's review of paging auction rules adopted in the Second Report and Order. We were further advised that applications for interim operating authority would be dismissed upon resolution of the pending petitions for reconsideration of the Commission's auction rules adopted in the Second Report and Order.

3) EEC hereby requests the Commission to direct the staff that it is permissible to accept applications from carriers seeking to provide interim service to areas adjacent to a licensee's currently authorized service area.<sup>4</sup> The Commission has previously determined that

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<sup>2</sup> The Second Report and Order does not contain a textual discussion of this order. Paragraph 227 states as follows:

IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. §155(c), the Chief, Wireless Telecommunications Bureau, IS GRANTED DELEGATED AUTHORITY to dismiss all mutually exclusive paging applications filed as of the adoption date of this Order and grant or dismiss all non-mutually exclusive paging applications filed as of the adoption date of this Order.

<sup>3</sup> EEC is receiving requests for paging services for areas it is not currently authorized to serve. Moreover, EEC is experiencing capacity problems which will shortly require refusal of service to members of the public seeking service.

<sup>4</sup> EEC thus requests that the Commission reinstate the 40 mile filing rule which was put in place in the First Report and Order, 11 FCC Rcd 16570 (Comm'n 1996), modified to account (continued...)

the paging industry is a dynamic and highly competitive industry that is experiencing rapid growth. More than 150 paging channels are allocated to each market, and over 600 licensed operators provide service to customers on a local, regional, or nationwide basis. In the past few years, paging subscribership has increased dramatically, but competition has kept average prices low. To meet customer needs and improve service to the public in this highly competitive environment, paging operators need flexibility not only to make modifications within their existing service areas, but to add sites that extend the coverage of their systems into areas of new growth, such as outlying suburbs and new business centers. Even a short-term freeze has the potential to harm the paging industry and the public by deterring this growth and stifling investment. Moreover, the impact of the freeze is felt most acutely by local and regional paging systems, who are prevented from expanding while more than a dozen nationwide carriers operating in each market have no such limitation on their ability to respond to increased demand in high-growth areas. For these reasons, we believe good cause exists to grant some relief from the freeze to non-nationwide incumbent paging licensees.

First Report and Order, 11 FCC Rcd 16570, 16581-82 (Comm'n 1996) (para. 21) (footnotes omitted) (emphasis added).<sup>5</sup>

4) In view of the fact that there is no schedule has been announced as to when the Commission will issue paging licenses via auction, in view of the fact that the Commission is currently considering fundamental changes to its paging auction rules which changes will likely engender further litigation, and in view of the pent up demand for paging services, EEC requests that

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<sup>4</sup>(...continued)  
for the interim nature of the authorization.

<sup>5</sup> The modified freeze permitted incremental expansion by incumbent licensees within 40 miles of a transmitter location which was authorized as of February 8, 1996. See First Report and Order, 11 FCC Rcd 16570, 16583 (Comm'n 1996) (para. 26). The Second Report and Order terminated the limited thawing of the freeze and EEC is not permitted to expand its system in any manner at this time despite the increasing congestion on its systems. It is noted that nationwide carriers are unaffected by the expansion freeze and they are free to expand into any area in the country, including EEC's markets and market into which EEC would like to expand.

the Commission permit carriers to file applications seeking interim operating authority.<sup>6</sup> Such authorizations would be on a secondary basis to the geographic license issued in the pertinent market and interim operations would have to be terminated upon notification by the geographic licensee that it intends to commence service immediately.<sup>7 8</sup> In cases in which the interim operator is also the permanent licensee, the interim license would automatically convert to a constructed facility under the permanent licensee's license.<sup>9</sup>

5) EEC submits that permitting interim operating authority would further the public interest by permitting existing carriers which are willing to risk capital to serve the heavy, pent up demand for paging services.<sup>10</sup>

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<sup>6</sup> Interim operating requests should be processed on a first-come first-served basis to avoid mutually exclusive situations. Also, interim operators should be permitted to grant contour extensions into the interim licensed area on an interim basis.

<sup>7</sup> In the event that on reconsideration the Commission determines to auction paging spectrum in a manner other than on a geographic basis, the interim operator would be required to cease operation upon notification by the permanent licensee, however selected.

<sup>8</sup> To avoid disruption to paging subscribers, a 30 day notice to the interim service provider appears to be reasonable. Any facility which is improved via an interim contour extension would have to return the station to its pre-interim operating parameters.

<sup>9</sup> Because the Commission intends that the permanent licensee will obtain the license through some auction procedure, the interim licensee will gain no advantage by constructing and operating the interim facility.

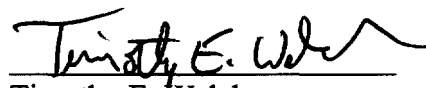
<sup>10</sup> Please note that the Commission has permitted interim operations in an analogous situation, i.e., where it was unknown when the ultimate license for a market would be issued. For instance, in cellular radio licensing, when some problem prevented the tentative selectee's application from being granted, the Commission permitted adjacent carriers to serve the unserved area on an interim basis. See e.g., Third Report and Order and Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd. 7183, 7190 (Comm'n 1992) (para. 43); La Star Cellular Telephone Co., 4 FCC Rcd. 3776 (Comm'n 1989) (para. 2), aff'd, La Star Cellular Telephone Co v. FCC, 899 F.2d 1233 (D.C. Cir. 1990); see also attachment hereto, a copy of the FCC's

(continued...)

WHEREFORE, in view of the information presented herein, it is respectfully submitted that the Commission direct that applications seeking interim CMRS paging authority on exclusive channels be processed on a first-come/first-served basis.<sup>10</sup>

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September 10, 1997

Respectfully submitted,  
ELECTRONIC ENGINEERING COMPANY

  
Timothy E. Welch

Its Attorney

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<sup>10</sup> For the Commission's convenience, copies of the instant filing are being hand delivered to Daniel Phythyon, David Furth, Ramona Melson, and James Bennett.

Report No. CL-96-36

March 8, 1996

01336-CL-MP-96	KNKQ357	413A	Iowa RSA #2, Inc.
01342-CL-MP-96	KNKA734	290B(1)	Century Cellunet of La Crosse Limited Partnership
01352-CL-MP-96	KNKN238	694B	US West New Vector Group, Inc.
01399-CL-MP-96	KNKN577	406B	Indiana RSA #4 Limited Partnership
01430-CL-MP-96	KNKQ275	612B	Pennsylvania RSA 1 Limited Partnership
01446-CL-MP-96	KNKN669	369A	Florida RSA #10, Inc.
01465-CL-MP-96	KNKQ296	369B	Centel Cellular Co. of Ft. Walton Beach Limited Partnership
01475-CL-MP-96	KNKQ357	413A	Iowa RSA #2, Inc.
01503-CL-MP-96	KNKN630	601A	United States Cellular Telephone Company (Greater Tulsa)

The following application for interim operating authority to provide service to the RSA pending the grant of permanent authority to another carrier has been granted on the date of this Public Notice unless otherwise noted.

<u>File Number</u>	<u>Callsign</u>	<u>Market</u>	<u>Name of Applicant</u>
01280-CL-P2-96	KNKP866	307A(3)	GTE Mobilnet of Birmingham Incorporated

This authorization is granted only to permit interim operations within the specified market until a permanent authorization is granted and that permittee is ready to begin providing service to the public. The interim authorization is granted because the initial lottery winner's application in this market has been dismissed, leading to a lengthy period of time before service can be provided to the public, and the public interest requires the early establishment of a competing cellular service in this market and protection to competition in the adjacent market. The existing licensee in the adjacent market on the same block of frequencies appears to be the most efficient provider of interim service to the public. This interim authorization is expressly contingent on the interim operator complying with the following conditions:

1. Construction and operation pursuant to this authorization is at the interim operator's own risk. The interim operator may not demand any compensation for its expenses for construction or operation pursuant to this authorization from the permanent licensee. Nothing in this authorization requires the interim operator to sell its equipment to the permanent licensee.
2. The interim operator must fully cooperate with the permanent licensee in effectuating a smooth transition to the provision of service in the market by the permanent licensee without disruption of service to the public. The interim operator must cease operations in the market on the date of initiation of permanent service or within 30 days of written notice by the permanent permittee to the interim operator of the day and time that it intends to initiate service, whichever date occurs later.

3. This authorization may only be transferred in conjunction with the transfer of the authorization in the adjacent market and then only after approval is obtained from the Commission. This authorization must be identified as an interim operation authorization in the transfer application filed with the Commission.

4. The interim operator must cooperate with the permanent licensee in transferring the customer base associated with the market to the permanent licensee, but only in accordance with subscriber decisions and good faith negotiations on terms and conditions of the transfer. The interim operator shall not interfere with the permanent licensee's efforts to transfer subscribers associated with the market to the permanent licensee. The interim operator may only recover from the permanent licensee the interim operator's direct costs in originally obtaining a transferred subscriber, i.e., payments made to agents or employees that are directly attributable to a transferring customer. The interim operator shall maintain records of sufficient detail to permit an audit that such direct costs have been incurred with respect to a particular subscriber.

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These authorizations do not convey to the licensee the right to receive protection from the capture of subscriber traffic, co-channel interference or first-adjacent-channel interference in any area outside of the authorized Cellular Geographic Service Area (CGSA) of the system. Moreover, any facility authorized herein with a service area boundary (SAB) extending into the CGSA of any other operating cellular system on the same channel block, regardless of when such other cellular system was/is authorized, is subject to the following condition: In the event that the licensee of the other cellular system requests that the SAB of the facilities authorized herein be removed from its CGSA, the licensee herein must reduce transmitting power or antenna height (or both) as necessary to remove the SAB from the CGSA, unless written consent from the licensee of the other cellular system, allowing the SAB extension, is obtained.

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All of the above applications will be available for public inspection in Room 5608, 2025 M Street, N.W., Washington, D.C., during the normal cellular reference room hours. Copies of these documents may be obtained from:

International Transcription Service, Inc.  
2100 M Street, N.W., Suite 140  
Washington, DC 20037  
Phone: 202-857-3800

- FCC -


TO: Electronic Engineering-Mark Clark

FR: Timothy E. Welch-202-775-0070(9026)(FAX)

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## CERTIFICATION

I hereby certify under penalties of perjury that I am the President of Electronic Engineering Company and that I have reviewed the foregoing Emergency Petition for Relief and that the facts contained therein, except for those about which public notice may be taken, are true and correct to the best of my knowledge, information, and belief.



Mark Clark  
President

September 9, 1997